

DETAILED ACTION

Acknowledgements

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

2. Claims 1, 2, 5, 7, 8, 11-21 are pending.

For reference purposes, the document paper number is 20100603.

Response to Amendments

3. The rejection of claims 7, 8, 11-21 under 35.U.S.C. 101 is withdrawn in light of Applicant's amendments.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2, 5, 7, 8, 11-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner, U.S Patent No. 6,092,102 in view of Menschik et al., U.S. Pre-Grant Pub No. 2004/0034550 further in view of Zakim U.S. Patent No. 7,379,885 and Shelton U.S. Patent No. 7,028,049.

6. With respect to claim 1, Wagner discloses a system comprising a laboratory system data store (Col. 7 lines 15-24); a result posting module to post laboratory results and a callback module to identify a clinical laboratory result requiring a communication to the person placing the laboratory order based on comparison to certain conditions/criteria and clinical data (Col. 3 lines 47-56; col. 7 lines 38-52, col. 8 lines 23-34).

Wagner does not specifically recite identifying a result based on information about the clinical laboratory order, however, a predictable result of his invention would be to include as many relevant triggering events or data patterns (e.g. clinical order data) in the event monitor in order to generate more specific or custom message types (KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385 (U.S. 2007)).

Wagner recites a data-reception sub-system receiving information from an LIS (col. 7 lines 22-29) and posting lab results to a database (Col. 7 lines 38-45). Wagner does not disclose that the database is an electronic medical record (EMR) data store and the result posting module publishing the clinical laboratory results directly from the laboratory information system data store to the electronic medical records data store. However, Menschik recites and electronic medical records (Fig. 7, ¶ 90, 94). It would therefore have been obvious to one of ordinary skill in the art to add the features of Menschik to Wagner with the motivation of facilitating medical data transfer among systems.

Wagner discloses an identified lab result being communicating to a recipient (Col. 7 lines 38-52) and Menschik recite an EMR communicating with users through a network (Fig. 3). Wagner and Menschik do not specifically disclose communicating lab results directly from the EMR to the person placing the lab order; however Zakim recites alerting a physician when a “significant medical fact is added by a laboratory to the patient's medical database” (Col. 30 lines 17-24) and a system receiving instructions from a physician for when to be alerted (Col. 32 lines 28-41). It would therefore have been obvious to one of ordinary skill in the art to add the features of Zakim to Wagner and Menschik with the motivation of helping physicians diagnose patient more efficiently.

Zakim recites notifying a physician of significant data pertaining to a patient's laboratory work (Col. 30 lines 17-24; col. 32 line 28-41). Wagner, Menschik and Zakim do not specifically disclose that the conditions for being notified include a priority level and a however Shelton recites a physician specifying such criteria (Col. 10 lines 41-44). It would have been obvious to one of ordinary skill in the art to add the features of Shelton to Wagner

to Menschik and Zakim with the motivation of alerting physicians according to what they determine as priority situations.

Claims 5 and 7 are rejected under the analysis of claim 1.

7. Claim 2 is rendered obvious, as Menschik recites HL7 which is a standard data exchange interface (§ 8).

Claim 8 is rejected under the analysis of claim 2.

8. With regards to claim 11, Wagner recites a method comprising the steps of accessing a data store containing a plurality of clinical laboratory results (Col. 7 lines 15-24); posting lab results to a database (Col. 7 lines 38-45); selectively identifying a clinical laboratory result requiring communication based on comparison to certain conditions/criteria and clinical data (Col. 7 lines 38-52, col. 8 lines 23-34); identifying a first preferred notification method (Col. 4 lines 53-57); and automatically generating a communication of the selected laboratory result by the first preferred method (Col. 7 lines 48-52).

Wagner does not specifically recite identifying a result based on information about the clinical laboratory order, however, a predictable result of his invention would be to include as many relevant triggering events or data patterns (e.g. clinical order data) in the event monitor in order to generate more specific or custom message types (KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385 (U.S. 2007)).

Wagner does not disclose an electronic medical record data store; however, Menschik recites and electronic medical records (Fig. 7, § 90, 94). It would therefore have been

obvious to one of ordinary skill in the art to add the features of Menschik to Wagner with the motivation of facilitating medical data transfer among systems.

Wagner discloses an identified lab result being communicating to a recipient (Col. 7 lines 38-52) and Menschik recite an EMR communicating with users through a network (Fig. 3). Wagner and Menschik do not specifically disclose communicating lab results directly from the EMR to the person placing the lab order; however Zakim recites alerting a physician when a “significant medical fact is added by a laboratory to the patient's medical database” (Col. 30 lines 17-24) and a system receiving instructions from a physician for when to be alerted (Col. 32 lines 28-41). It would therefore have been obvious to one of ordinary skill in the art to add the features of Zakim to Wagner and Menschik with the motivation of helping physicians diagnose patient more efficiently.

Zakim recites notifying a physician of significant data pertaining to a patient's laboratory work (Col. 30 lines 17-24; col. 32 line 28-41). Wagner, Menschik and Zakim do not specifically disclose that the conditions for being notified include a priority level and a however Shelton recites a physician specifying such criteria (Col. 10 lines 41-44). It would have been obvious to one of ordinary skill in the art to add the features of Shelton to Wagner to Menschik and Zakim with the motivation of alerting physicians according to what they determine as priority situations.

9. For claim 12, Wagner recites determining if the communication of laboratory result is successfully completed (Col. 8 lines 52-59). Wagner also recites different communication channels (Abstract, col. 8 lines 8-22), and resending a message to a user (Col. 14 lines 38-46) and using an alternate route to resend a message (Col. 2 lines 41-42). It would therefore

have been obvious to one of ordinary skill to use the teachings of Wagner to communicate message using an alternate communication channel in the event that a message fails to be communicated using a first channel in order ensure the relay of the message.

Claim 19 is rejected under the analysis of claim 12.

10. Regarding claims 13-17, Wagner recites selecting communication channels based on user preferences (Abstract). Another predictable result of Wagner would therefore be for such preferences to include conditions (e.g. communication device availability, user availability or schedule) and communication channels (e.g. email, PDA, telephone, etc.) that optimize the message delivery.

Claims 20 and 21 are also rejected under the above analysis.

11. With respect to claim 18, Wagner recites a method comprising the steps of accessing a data store containing a plurality of clinical laboratory results (Col. 7 lines 15-24); posting lab results to a database (Col. 7 lines 38-45); selectively identifying a clinical laboratory result requiring communication based on comparison to certain conditions/criteria and clinical data (Col. 7 lines 38-52, col. 8 lines 23-34); identifying a first preferred notification method (Col. 4 lines 53-57).

Wagner does not specifically recite identifying a number of conditions for the preferred method, but he does disclose prior art that recites testing a set of criteria, and based on such criteria being met, performing an action such as sending a message (Col. 2 lines 64-67; col. 3 lines 1-2). Furthermore, the step of automatically generating a communication of laboratory results if the conditions are satisfied is optional, and it has been held that, "Language that

suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation” (MPEP 2106.II C). Therefore, the last limitation of claim 18 does not further limit the claim.

Wagner does not disclose an electronic medical record data store; however, Menschik recites and electronic medical records (§ 90, 94). It would therefore have been obvious to one of ordinary skill in the art to add the features of Menschik to Wagner with the motivation of facilitating medical data transfer among systems.

Response to Arguments

12. Applicant's arguments with respect to claims 1, 2, 5, 7, 8, 11-21 concerning the newly added limitations have been considered but are moot in view of the new ground(s) of rejection as see above.

13. With respect to Applicant's argument that Menschik does not teach selectively identifying a clinical laboratory result posted in the electronic medical record data store and communicating the identified laboratory result directly from the EMR to the person placing order; Examiner respectfully disagrees. Wagner recites identifying a clinical laboratory result requiring a communication to the person placing the laboratory order (Col. 3 lines 47-56; col. 7 lines 38-52, col. 8 lines 23-34), and Menschik recites, as Applicant noted, that health care professionals have access through a local area network to different systems including EMR which stores patient charts or records using computers or PDAs (Fig. 7, § 92). Wagner and Menschik do not specifically disclose communicating lab results directly from the EMR to the

person placing the lab order; however Zakim recites alerting a physician when a “significant medical fact is added by a laboratory to the patient's medical database” (Col. 30 lines 17-24).

Conclusion

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to VALERIE LUBIN whose telephone number is (571)270-5295. The examiner can normally be reached on Monday-Friday 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry O'Connor can be reached on 571-272-6787. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/V. L./

Examiner, Art Unit 3626

/Robert Morgan/

Primary Examiner, Art Unit 3626